

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EBEN ALEXANDER, III, M.D.

Plaintiff,

v.

BRIGHAM AND WOMEN'S PHYSICIANS
ORGANIZATION, INC., successor to
Brigham Surgical Group Foundation, Inc.,
BOSTON NEUROSURGICAL FOUNDATION
INC., BRIGHAM SURGICAL GROUP
FOUNDATION, INC. DEFERRED
COMPENSATION PLAN, BRIGHAM
SURGICAL GROUP FOUNDATION, INC.
FACULTY RETIREMENT BENEFIT
PLAN, COMMITTEE ON COMPENSATION
OF THE BRIGHAM SURGICAL GROUP
FOUNDATION, INC., and
PETER BLACK, M.D.

Defendants.

Case No. 04-10738-MLW

**PLAINTIFF'S MOTION FOR LEAVE TO FILE REPLY BRIEF
IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE LATE
PRODUCED "NEW" VERSIONS OF THE UDC AND FRBP**

Pursuant to LR 7.1(B)(3), plaintiff Dr. Eben Alexander respectfully requests leave to file a short reply brief in support of Plaintiff's Motion in Limine to Exclude Late Produced "New" Versions of the UDC and FRBP. In support hereof, Dr. Alexander states that the reply brief directly addresses the argument advanced by defendants in their opposition to the motion in limine and the reply brief will assist the Court in determining the motion. In further support hereof, Dr. Alexander states that the Court's ruling on this issue is critical because it will impact presentation of the evidence at trial. Therefore, the Court should consider the points in the reply brief, which include: (i) this is not the first time defendants have produced documents late; (ii)

this case and the related administrative proceeding have been litigated based on stipulated versions of the UDC and FRBP and it is too late to undo both proceedings; (iii) the “new” plans are irrelevant to the issues to be tried; (iv) there is no evidence that the “new” plans were ever implemented; (v) defendants concede that the “new” version of the UDC is inconsistent with other evidence they intend to introduce at trial; and, (vi) defendants have failed to produce all information relating to eligibility for the plans. For these reasons, Dr. Alexander will suffer serious prejudice if the “new” plans are admitted at trial.

WHEREFORE, Dr. Alexander respectfully requests that the Court grant him leave to file the reply brief submitted herewith.

Respectfully submitted,

EBEN ALEXANDER, III, M.D.

By his attorneys,

/s/ Colleen C. Cook

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Dated: October 17, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon David Casey, Esq., counsel for defendants, by electronic mail and First Class mail on October 17, 2006.

/s/ Colleen C. Cook

Colleen C. Cook